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AUTHOR Willard-Holt, Colleen
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ABSTRACT

This bulletin explores the current status of federal and state, especially Pennsylvania, legislation and recent court decisions pertaining to gifted education. It notes the existence, at the federal level, of only one law related to gifted education, the Jacob Javits Act of 1988 which, however, does not mandate the creation of special programs and fails to provide due process rights. The brief review of legislation in various states finds that all 50 states have formulated policies in the form of legislation, regulations, rules, or guidelines that support education of the gifted and that 33 states mandate gifted education with widely divergent provisions and levels of funding. Pennsylvania currently mandates gifted education and, like 22 other states, places it under the umbrella of special education, thus providing the same procedural safeguards as are provided for children with other exceptionalities. A review of Pennsylvania court cases finds that they support the requirement that services be driven by an individualized education program based on student needs. A Connecticut case is highlighted as illustrating the importance of law that defines giftedness as an exceptionality which requires special programming. Eight recommendations are offered. (Contains 17 references.) (DB)

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Gifted Education and the Law

by

Colleen Willard-Holt, Ph.D.

Assistant Professor, Penn State University, Harrisburg • PAGE Board Member

This Bulletin will explore the current status of federal and state legislation pertaining to gifted education, and review some recent and relevant court decisions.

Federal Legislation and Nationwide Status of Gifted Education

At present, only one law related to gifted education exists at the federal level: the Jacob Javits Act of 1988 (Title IV, Part B). The goals of this act are "to provide financial assistance to State and local educational agencies... to initiate a coordinated program of research... designed to build a nationwide capability in elementary and secondary schools to meet the special educational needs of gifted and talented students" (Sec. 3062 (b)).

This act, while welcomed for its recognition of the existence and needs of gifted students, did not mandate the creation of special programs and fails to provide due process rights. These omissions are inconsistent with the *National Excellence* report (OERI, 1993), which declared that schools must "(e)xpand effective educational programs" for the gifted (p. 24). Several years earlier, the National Commission on Excellence in its report entitled *A Nation at Risk* (1983) stated that more than one-half of gifted students underachieved, and Ford (in press) found that 20% of school dropouts are gifted. To address this problem, both the National Commission on Excellence (1983) and the *National Excellence* report (1993) recommended that these

students be provided with enriched and accelerated curricula. In a 1992 Gallup Poll (*Education Week*), the public at large agreed: 61 percent of respondents believed that schools should do more to challenge the "very smartest" students. However, less than half of the nation's gifted students participate in special programs designed to meet their needs (Zirkel & Stevens, 1987) and only about two cents out of every one hundred dollars of federal education money is spent on this population (OERI, 1993). In addition, those programs which do exist are plagued by problems: narrow definitions of giftedness, offerings restricted to certain grade levels and/or subject areas, superficial provisions (characterized by limited time frames, discontinuity, and fragmentation (Cox, Daniel, & Boston, 1985)) rather than comprehensive programs, and failure to address specific needs of gifted students (Gallagher, 1988). The conclusion to be drawn is that even with the support of the Javits Act and the recommendations of the National Commission on Excellence, our nation's gifted students are not receiving the educational services they need and to which they are entitled.



State Legislation and Status of Gifted Education in Various States

All 50 states have formulated policies in the form of legislation, regulations, rules, or guidelines that support education of the gifted (Passow & Rudnitski, 1993). Currently 33 states mandate gifted education, with widely divergent provisions and levels of funding (Coleman & Gallagher, 1992). The following components are contained in some or all of the various state policies pertaining to the gifted: state mandated services, district plans for the gifted, gifted education as part of special education, philosophy or rationale, definitions of gifted and/or talented, identification procedures, programs for the gifted, differentiated curriculum and instruction, counseling and other support services, program evaluations, and funding (Passow & Rudnitski, 1993).

A study conducted by the National Research Center on the Gifted and Talented (Purcell, 1994) reported that gifted programs were "intact" and "expanded" in only those states which had mandates *and* were in sound economic status. Respondents from those states attributed the health of gifted programs to the existence of the mandate and to advocacy efforts. In states which had mandates but were in poor economic condition and in states with no mandates, gifted programs were "threatened, reduced, or eliminated" in high numbers. Additionally, the study found that gifted programs served only certain grade levels. Approximately 75% of gifted students in grades 3 to 8 received program services; 50% of students in grades 1-2 and 9-12 received services; and services for students in Pre-K and K were virtually nonexistent.

Pennsylvania currently mandates gifted education and defines giftedness under state statute (22 Pa. Code Section 342.1). Like 22 other states, Pennsylvania places gifted education under the umbrella of special education. Since 1974, gifted children in Pennsylvania have been protected by the same mandatory procedural safeguards as children with other exceptionalities. Chapter 16, which is presently under consideration by the State Board of Education, would separate gifted education from special education for students with disabilities. There is no special certification for teachers of the gifted in Pennsylvania, but such certification is required in 21 other states.

Recent Court Decisions

In Pennsylvania, several court decisions hold implications for gifted students. In the case of *Central York School District v. Department of Education* (1979), the court found that provisions of programs for gifted students were not contingent upon receipt of state subsidies. In *Centennial School District v. Department of Education* (1986), parents were upheld in their request for accelerated instruction above and beyond the gifted enrichment program. The guiding principle in Pennsylvania is that services must be driven by an IEP which is based on student needs.

A recent decision in Connecticut points out the importance of a statutory definition of giftedness as an exceptionality. Connecticut's gifted education provisions are not protected by statute, as they are in Pennsylvania. In the case of

Broadley v. Board of Education of the City of Meriden (1994), the Supreme Court of Connecticut held that the state constitutional right to a free public education does not afford gifted children the right to a special education program.

The details of the Broadley case are as follows. In 1986, kindergartner Neil Broadley was identified as gifted by his school district but denied special education programming designed to meet his individual needs. He was provided with some individualized work, but under no systematic and comprehensive program. His case was damaged four years later when the state of Connecticut removed gifted education from the umbrella of special education and simultaneously severely cut funding for gifted programs. The Broadleys lost by summary judgment without going to trial and again on appeal to the Supreme Court of Connecticut because neither court found a state constitutional

right to special programming. The state law on special education defined an *exceptional* child as one who "deviates either intellectually, physically, socially, or emotionally so markedly from normally expected growth and development patterns that he or she will be unable to progress effectively in a regular school program and needs a special class, special instruction, or special services..." (Conn. Gen. Stat. 10-76a(c), 1994). The law goes on to state that

(e) Children requiring special education include any exceptional child who (1) is mentally retarded, physically handicapped, autistic,... or suffering an identifiable learning disability which impedes such child's rate of development... or (2) has extraordinary learning ability or outstanding talent in the creative arts, the development of which requires programs or services beyond the level of those ordinarily provided in regular school programs... (Conn. Gen. Stat. 10-76a(e), 1994).



However, while the statute states that children covered under subdivision (1) are entitled to special education, "(c) Each local or regional board of education *may* (emphasis added) provide special education for children requiring it who are described by subdivision (2) of subsection (e) of section 10-76a" (Conn. Gen. Stat. 10-76d(c), 1994). In other words, special programs for gifted students were permissive but *not mandatory* according to the statute. The state only requires that gifted students be *identified*, and local districts may or may not choose to provide for their needs. [It should be noted that this decision occurred eight years after the initial filing; Neil had reached the seventh grade.]

The difference between *Broadley* and *Centennial* is that Pennsylvania Statutory Law *does* define giftedness as an exceptionality which requires special programming. Advocates for gifted students must be vigilant in maintaining such a definition.

Recommendations

The cost of neglecting our gifted students is both incalculable and unconscionable. In reviewing the current legal status of gifted education, Ford, Russo, and Harris (1994) put forth the following challenges to advocates of gifted programs so that "all gifted students receive an excellent, appropriate, and equitable education" (p. 227).

Challenge 1:

All school personnel will receive systematic and continuous training in working with gifted learners.

Challenge 2:

All teachers of the gifted will have specialized preparation in gifted education.

Challenge 3:

All teachers must be empowered to recognize and work with gifted learners.

Challenge 4:

All educators—regardless of the level at which they teach—must be prepared to recognize giftedness in non-traditional or under-represented groups.

Challenge 5:

The number of advocacy groups for gifted students must be increased.

Challenge 6:

Support on behalf of gifted learners by lobbyists must be increased.

Challenge 7:

Comprehensive programs (rather than provisions) must become the rule rather than the exception.

Challenge 8:

Legislative commitment to gifted education must be increased (pp. 227-228).

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